

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF)	
GLIDDEN POINT OYSTER COMPANY, INC.)	
FOR AN AQUACULTURE LEASE LOCATED)	FINDING OF FACT,
IN DODGE LOWER COVE IN THE)	CONCLUSIONS OF LAW, AND
DAMARISCOTTA RIVER, EDGECOMB, LINCOLN))	DECISION
COUNTY, MAINE		

On April 22, 1999, Glidden Point Oyster Company, Inc. of Edgecomb, Maine, applied for an aquaculture lease, comprised of three tracts, totaling 5 acres of coastal waters of the State of Maine in Dodge Lower Cove in the Damariscotta River, Edgecomb, Lincoln County, Maine. The applicant requested the lease for a term of 10 years for the purpose of cultivating American oysters, Crassostrea virginica, and European oysters, Ostrea edulis, using bottom culture techniques.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; the use or enjoyment within 1,000 feet of municipally, state, or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held November 8, 1999 at 7:00 p.m. in Damariscotta.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

Ms. Barbara Scully, a general partner and a principal officer (Treasurer) of Glidden Point Oyster Company, Inc., provided testimony on the company's application. Ms. Scully and her

husband, Mr. Kevin Scully, are the principal officers in Glidden Point Oyster Company, Inc. The representative testified on their existing aquaculture activities in the Damariscotta River, why they are applying for the proposed lease site, and the proposed operational activities. (Exhibits 1 and 2)

The representative testified that she and her husband have operated an oyster business out of their home in Edgecomb since 1988. They have been leaseholders of two leases in the Damariscotta River since 1993; a 2.29 acre lease off Riverside Boatyard in Newcastle and a 2.36 acre lease off Prentiss Island in South Bristol. These leases are approximately 3.4 miles and 1.5 miles respectively north, upriver, from the proposed lease. They own shorefront property, moorings for two 13' boats, and a private dock located approximately 570' due west northwest from the proposed lease northwest corner. They currently raise both American and European oysters, and propose to continue to do so, as they believe that it gives their company a stronger stand in the marketplace.

The representative testified that they have practiced bottom culture without a lease at the proposed site since 1988. She explained that they have been transplanting European oysters to the proposed lease site when they found that the European oysters were out-competing the American oysters at the Prentiss Island site in 1989. She stated that even though the European oysters grow well at the Prentiss Island lease, they grow better in the relatively colder water temperature, and faster currents, at the proposed lease site.

The representative explained that, when European oysters are not located in optimal growing conditions, they are more susceptible to a naturally occurring infection called Bonamia spp. This organism has a seven year cycle and, when it recedes, the European oyster population rebounds and grows well again.

The representative testified that they would like to lease the area that they have practiced bottom culture on since 1988 and seek the proposed lease to prohibit poaching from that area. She provided log book information on their seeding activities on the proposed lease

in 1988 to 1991. The representative testified that they have seeded and harvested oysters from the proposed lease area periodically since 1988 to 1999. Exhibit 4.

The representative testified that, in her opinion, there was adequate room between the proposed lease boundary and the shore for riparian ingress and egress. The applicant does not seek to use or access any riparian land other than its own property. She explained that all access would be gained from their property, private dock, and moorings. The representative testified that it would prefer that there be no moorings placed within the proposed lease. However, it would be willing to accept a condition to accommodate a mooring on a corner area of the proposed lease if it were requested through the regulating authorities such as a local harbormaster or the Army Corps of Engineers (ACOE).

The representative testified that the only permanent gear on the proposed lease would be the mandatory boundary markers. There would be no permanent moorings, machinery, or equipment. The representative testified that its seeding and harvesting activities would be the same as they have been in the proposed site when it used it without a lease. She testified that the applicant would use small tan toggles to mark working areas within the proposed lease for temporary periods of time of one to two months. Planting and harvesting would be done by hand using SCUBA divers. She testified that dragging would not be used as a harvest method and no processing of oysters would take place on the proposed lease.

The representative testified that the proposed lease is well outside and east of the main navigation channel. She stated that the depth of the site ranges from 2' to 30' deep. The primary navigational use of the proposed lease area would occur during the months of July, August, and September when recreational fishing for blue fish and striped bass takes place. She stated that the river area near the proposed lease, and just south of the proposed lease off the southern extreme of Dodge Lower Cove, is a popular recreational fishing area during that time of the year. She testified that she would not object to recreational fishing and boating on the proposed lease. The applicant would, however, request to prohibit dragging and diving within the proposed lease to prevent poaching. The representative explained that scallop

dragging typically occurs across the river from the proposed lease north of Glidden Ledge in 80' to 90' of water, not on the shallow 2' to 30' ledge area of the proposed lease. She stated that lobster and crab fishing would be acceptable on the proposed lease although it is not very common there. The representative stated that there were European oysters present in 1988 when they first planted oysters at the proposed site, although not in commercial numbers, in her opinion.

The representative testified that oyster seed would be purchased from the Pemaquid Oyster Company hatchery on the Medomak River and from that company's upweller facility on the Damariscotta River located at the Schooner Landing Marina.

A biologist, employed by the Department, testified about the statutorily required site review that he conducted July 27, 1999. The Department report included the following criteria: a SCUBA diver survey of the local flora and fauna and bottom characteristics; vertical profiles of the water column which include temperature, salinity, dissolved oxygen and pH, and depths; proximity measurements of the proposed site to shore and to other leases; plus observations and documentation of local fisheries.

The biologist testified that an underwater video was taken across the length of the proposed lease with a westerly diversion in the middle of the dive survey. The bottom sediments were composed of silt and mud at the northern end, firmer sediments with shell hash and rocks at the southern end, and interspersed with ledge. The water depths were shallow, ranging from 7' to 30' with the most shallow depth located at the southwest corner. Local flora and fauna included an abundance of European oysters at the south end of the proposed lease; sand (mud) shrimp and hermit crabs were commonly observed; and occasional or single sightings were made of finger sponge, rock crab, horseshoe crab, green crab, winter flounder, blood star, an unidentified gastropod, barnacles, and the red algae commonly called bushy red weed. No unusual measurements were reported for temperature, salinity, or dissolved oxygen. The primary current is tidally driven, flowing approximately parallel along the length of the proposed lease, and should provide adequate feed for the culture of shellfish.

The biologist testified that the distances on proximity of the proposed lease boundaries to shore in his report were based on the positions of the corner buoy markers on July 27, 1999. He stated that the positions of those buoys were extended north and south of the proposed lease boundaries described in the application. He provided a map with the July 27th buoy positions and the applicant's requested boundary coordinate positions. The biologist testified that there would be 128' from the proposed southwest corner to the nearest shore due west and 375' between the northwest corner and nearest shore. He also stated that the representative's dock would be approximately 510' due west northwest from the proposed northwest corner. Exhibit 5.

According to the biologist, the town of Edgecomb does not employ a harbormaster who has jurisdiction in this area. In his opinion, the proposed lease area would likely have a fair amount of shelf or drift ice from upriver during the winter months. There were no moorings observed within the proposed lease, and the only other moorings in the vicinity were two moorings located near the representative's dock. The biologist testified that on July 27, 1999, he observed one recreational fishing vessel in the vicinity of the proposed lease. He testified that the proposed lease would be well outside the navigation channel.

A riparian and next door neighbor of the representative testified on her concerns that the level of oyster processing would increase and impact herself and/or her property.

Findings of Fact

According to the Department's biologist, the only moorings within the vicinity of the proposed lease are two that belong to the representative and her husband. Testimony from the applicant's representative indicated that no access of riparian land was requested or required other than the riparian land owned by the representative and her husband. Testimony from the Department's biologist indicated there would be 128' to 375' of space between the western boundary of the proposed lease and shore. The representative testified that moorings for riparians would be acceptable on the corner areas of the proposed lease if requested by a local harbormaster or regulating agency for moorings such as the ACOE. Based on the evidence

and testimony, I find that the lease will not unreasonably interfere with the ingress and egress of the riparian owners, given the 128' to 375' distance to shore for passage, that the proposed lease has no structures other than the required boundary markers, and the willingness of the applicant to accept a condition to accommodate mooring requests for riparians from the harbormaster or ACOE.

The proposed lease is located in shallow waters, 2' to 30' west of, and outside of, the main navigation channel. Testimony from the Department's biologist and the applicant's representative indicated the proposed leases activities would not interfere with navigation in the area. The applicant testified that vessel navigation across the open areas of the lease would be acceptable. Based on the evidence and testimony, I find that the lease will not unreasonably interfere with navigation in the area.

The applicant's representative testified that there is little or no commercial fishing in the proposed lease area except for the possibility of a small amount of lobster fishing. Lobster and crab trapping in the open areas of the proposed lease would be acceptable. The nearest existing aquaculture lease is located upriver approximately 1.5 miles, and is held by the representative and her husband. The Department's biologist and the applicant's representative testified that recreational fishing during the striper and blue fish season is popular within the area and particularly off the point just south of the proposed lease. The representative testified that recreational fishing of this sort was acceptable in the open areas of the proposed lease. The representative requested that diving and commercial dragging be prohibited to prevent poaching. According to the Department's Water Quality Program, the area is classified as open for the harvest of shellfish. The town of Edgecomb has a Municipal Shellfish Conservation Program. However, since the area is classified as open and has been for a long period of time, no pollution abatement program has been necessary for this area.

Based on the testimony and evidence, given the willingness of the applicant to allow recreational line fishing to occur on the proposed lease, and based on the testimony and evidence that the proposed lease is not commercially dragged for scallops, I find that the

aquaculture activities for this site will not unreasonably interfere with fishing or other uses of the area.

No information in the record indicated that the proposed activities would cause any interference with the local flora and fauna. According to the Department's biologist, a variety of organisms were observed during the diver survey given the pre-existing practice of bottom culture without a lease. The applicant's representative testified that its bottom culture practices would remain the same for this area if a lease were granted. Based on the evidence and testimony, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing significant flora and fauna.

The applicant's representative testified that seed American and European oysters would be obtained from a Maine hatchery source such as the Pemaquid Oyster Company facilities in Breman or Damariscotta. Based on this evidence, I find that there is an available source of American oyster and European oyster seed to be cultured for this lease.

The applicant's representative testified that all access would take place from the riparian private property and dock owned by the representative and her husband. No use of any public facilities were requested or required. According to the maps and charts, the nearest public landing facility is upriver approximately 3.5 miles, in Damariscotta. Based on the testimony and evidence, I find that the proposed lease activities will not unreasonably interfere with public use or enjoyment and that the site is not located within 1,000' of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner, given the condition that riparian moorings requested by a local harbormaster or ACOE would be accommodated on any corner of the lease;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;

3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area, with the condition that recreational boating, line fishing, and lobster and crab fishing be allowed;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters, Crassostrea virginica, and European oysters, Ostrea edulis, to be cultured for the lease site; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072(7-A).

Decision

Based on the foregoing, the Commissioner grants the requested lease of 5 acres to the applicant for a period of ten (10) years from the date of this decision, for the purposes of cultivating American oysters, Crassostrea virginica, and European oysters, Ostrea edulis, using bottom culture techniques as described in the application and the hearing record. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$500, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. recreational line fishing, lobster and crab fishing, and recreational boating are allowed in the open areas of the lease;
2. riparian moorings requested by a local harbormaster or the ACOE will be accommodated on any corner area of the lease; and
3. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or, that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources